**R.SA No. 1982 OF 2004**

Present:- Mr. Kuldip Tiwari, Advocate
for the appellant.

Mr. G.C. Gupta, DAG, Punjab

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A reading of the judgments of the courts below shows that in so far as the relief of setting aside the orders dated 06.12.1989 and 05.03.90 vide which increments of the plaintiff were stopped with cumulative effect without holding a detailed inquiry is concerned, the same was granted to the plaintiff and both the orders were set aside. It has been brought to my notice by the learned counsel for the respondent that in terms of the liberty granted by the lower appellate court to conduct a fresh inquiry into the aforesaid matter an inquiry has been initiated and proceedings are likely to be finalized within next six weeks.

Learned counsel for the appellant,plaintiff in the suit, however contends that he had also challenged the order dated 02.05.1991 vide which two increments were stopped without cumulative effect. He had also prayed that he should be granted full salary for the period when he remained under suspension from 06.12.1988 to 17.05.1989.

The lower appellate court has found that since the order dated 2.05.1991 was only imposing minor penalty or with holding two increments without cumulative effect, it was not vitiated by any legal infirmity as it was passed after show cause notice issued to the plaintiff. I do not find any error in the findings recorded by the lower appellate court as also the trial court.

Still further in so far as the full salary for the period the plaintiff remained under suspension, is concerned, I find that the lower

appellate court has held that the plaintiff was under suspension as he had mis-behaved with the Assistant Employment Officer and had abused him. These lapse were duly proved in the departmental inquiry. On this count, he was given minor punishment of stoppage of two increments without cumulative effect. Hence, he was not entitled to full salary for the period of suspension.

The observations of the lower appellate court to this fact are as hereunder:-

> The plaintiff was suspended per order dated 6.12.1988 ( Ex.P7) . He was re-instated per order dated 17.5.1989 (copy Ex.P8). This suspension related to the lapses on the part of the plaintiff that he remained absent from duty from 2.11.1988 to 4.11.1988 without getting his leave sanctioned. When he was asked to explain his conduct he did not submit any reply. He had also misbehaved with the Assistant Employment Officer. He had also abused him. These lapses stood duly proved, per inquiry report Ex.D42. He was given minor punishment of stoppage of two increments without cumulative effect. Therefore, he was not exonerated for the lapses.
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> In view of the above, the learned Government Pleader contended that the plaintiff was not entitled to full pay and allowances, in-as-much-as, the plaintiff never applied with the request to give him such allowances.

In rebuttal to above, the learned counsel for the plaintiff contended that he was entitled to all the benefits accruing to him with regard to back wages for the period he remained under suspension. In support of it he cited Kartar Singh v. State of Punjab 1994 (3) R.S.J. 784. This authority related to the termination and subsequent re-instatement. It was held that once the order of termination was held to be illegal, he was entitled to back wages. This authority has no applicability to the facts of the present case. In our case the plaintiff was found guilty and he was also punished for that purpose. The learned lower court erred in appreciating the facts and circumstances. Hence, the findings of the learned lower court allowing the plaintiff to full pay and other allowances for the suspension period cannot be upheld."

I also find no error in the findings recorded by the lower appellate Court on this issue.

The learned counsel further argues that in fact the Adverse Confidential Remarks for the year 1988-89, 1989-90 deserve to be set aside. In this regard also the lower appellate Court has found that there were numerous lapses on the part of the plaintiff for this period. The plaintiff had himself pleaded that as many as three inquiries were held against him, in which he was found guilty. Thus, the lower appellate Court found that there was sufficient material on the record to justify the remarks. It was also found that there was no procedural error in recording the said remarks. Therefore, I find no error in the view taken by the lower appellate Court on this issue as well.

For the reasons aforementioned, I find no substantial question of law that arises for determination in this regular second appeal, the same is accordingly dismissed.

September 29, 2006 **( P.S. PATWALIA )**
**dinesh** **JUDGE**